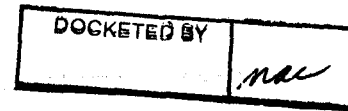




0000027025

BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

MAY 21 2002



WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF U. S. WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH SECTION 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

DECISION NO. 64837**ORDER**

Open Meeting
May 17, 2002
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On February 16, 2001, the Commission issued Decision No. 63384, conditionally approving Qwest Corporation's ("Qwest" or the "Company") compliance with Section 271 of the Telecommunications Act of 1996 ("1996 Act") Checklist Item No. 10 – Databases and Associated Signaling.

2. The 1996 Act added Section 271 to the Communications Act of 1934. The purpose of Section 271 is to specify the conditions that must be met in order for the Federal Communications Commission ("FCC") to allow a Bell Operating Company ("BOC"), such as Qwest, formerly known as US WEST Communications, Inc. ("US WEST")¹ to provide in-region interLATA services. The conditions described in Section 271 are intended to determine the extent to which local phone service is open to competition.

3. Section 271 (c)(2)(B) sets forth a fourteen point competitive checklist which specifies the access and interconnection a BOC must provide to other telecommunications carriers in order to satisfy the requirements of Section 271. Section 271(c)(2)(B) requires a BOC desiring to make an

¹ For purposes of this Order, all references to US WEST have been changed to Qwest.

1 application pursuant to Section 271 to provide or offer to provide "[n]ondiscriminatory access to
2 databases and associated signaling necessary for call routing and completion."

3 4. In Decision No. 63384, the Commission found that all issues raised in the Arizona
4 Workshops were resolved and that Qwest met the requirements of Checklist Item No. 10, subject to
5 Qwest updating its SGAT to incorporate language agreed upon by the parties in other region
6 Workshops and resolution by the Hearing Division of how to treat issues arising in other jurisdictions
7 after the record in Arizona has closed.

8 5. On March 26, 2001, the Hearing Division issued a Procedural Order setting forth
9 procedures for supplementing the record in Arizona for impasse issues that arise in other jurisdictions
10 after the Workshop has concluded in Arizona. Pursuant to the March 26, 2001, Procedural Order a
11 party may request to supplement the record in Arizona by filing a brief within 10 business days from
12 the date the issue is first declared at impasse in another jurisdiction. Other parties file replies to the
13 request within 7 business days, and Staff files a report, including its procedural and substantive
14 recommendations for the resolution of the dispute.

15 6. On April 9, 2001, AT&T Communications of the Mountain States, Inc. ("AT&T") and
16 WorldCom, Inc. ("MCIW") filed a request to supplement the record regarding Checklist Items Nos.
17 3, 7, and 10 with disputed issues raised in other region workshops.

18 7. On April 17, 2001, Qwest filed a response to AT&T and MCIW's Request to
19 Supplement the Record Regarding Checklist Items Nos. 3, 7, and 10.

20 8. On October 12, 2001, Qwest filed a Supplemental Response to AT&T's and MCIW's
21 Request to Supplement the Record Regarding Checklist Items Nos. 3, 7, and 10.

22 9. The issue MCIW wanted to consider in reopening Checklist Item No 10 was whether
23 it should be given bulk access to Qwest's CNAM ("Customer Name") database. In SGAT Sections
24 9.17.2.3 and 9.17.2.4, Qwest limits CLEC access to the CNAM database to individual queries, as
25 opposed to obtaining bulk transfer of all of the database. MCIW argues that the "per dip" or "per
26 query" access that Qwest permits CLECs is grossly inferior to the access Qwest itself enjoys and will
27 create discriminatory advantages for Qwest. MCIW asserts that bulk access to the CNAM database
28 would allow CLECs to structure their databases to suit their customers' needs as contemplated by the

1 1996 Act. Also MCIW claims bulk access would permit it to provide Caller ID service to its
2 customers with the same level of efficiency as Qwest, and that limiting it to per-query access prevents
3 MCIW from controlling the service quality, management of the database, or from adding new
4 features.

5 10. On November 2, 2001, Commission Staff filed its Supplemental Report on Checklist
6 Item No. 10 – Access to the Calling Name Assistance (“CNAM”) database (“First Supplemental
7 Report”).

8 11. The Hearing Division issued a Recommended Order for Staff’s Supplemental Report
9 on December 3, 2001. The December 3, 2001 Recommended Order concluded that MCIW had not
10 cited authority that supports its request for bulk access to Qwest’s CNAM database, nor had it
11 provided sufficient information on its technical feasibility argument to permit the Commission to
12 resolve the issue in MCIW’s favor.

13 12. The Recommended Order went before the Commission at an Open Meeting on
14 December 20, 2001. The Commissioners concluded that the record was not sufficiently developed
15 for them to issue a decision on whether to provide CLECs with bulk access to Qwest’s CNAM
16 database. They remanded the issue for “fuller analysis of the facts and a fuller factual record on the
17 database transfer.”

18 13. On January 10, 2002, an additional workshop was held to supplement the record on
19 whether or not CLECs should be given bulk access to Qwest’s CNAM database. Both Qwest and
20 MCIW offered testimony.

21 14. On February 28, 2002, Staff filed a Second Supplemental Report on Qwest’s
22 Compliance with Checklist Item No. 10 – Databases and Associated Signaling (“Second
23 Supplemental Report”). A copy of Staff’s Second Supplemental Report is attached hereto as Exhibit
24 A and incorporated herein by reference.

25 15. The CNAM database allows CLECs to secure the listed name information associated
26 with the requested telephone number in order to provide Caller ID services to their customers. The
27 FCC has identified the CNAM database as a call-related database that ILECs must provide to LECs
28 on an unbundled basis at total element long-run incremental cost (“TELRIC”).

1 16. Section 51.319(e)(2)(A) of the FCC's rules requires that ILECs provide non-
2 discriminatory access to all call-related databases as UNEs. MCIW asserts that the "non-
3 discriminatory" requirement means that Qwest has a duty to provide access to the databases in at
4 least the same manner that Qwest provides it to itself and to other carriers.

5 17. MCIW claims bulk access to the CNAM database would permit MCIW to provide
6 Caller ID service to its customers with the same level efficiency as Qwest. In addition, limiting
7 MCIW to per query access would prevent MCIW from controlling the service quality, management
8 of the database, or from adding new features, thus, only allowing the provision of inferior service.

9 18. MCIW asserts that purchasing CNAM on a batch basis is valuable and in the public
10 interest for several reasons: CLECs would not be restricted to the exact same service and process as
11 offered and used by Qwest, allowing for the development of innovative services; bulk access allows
12 CLECs to structure their databases to suit their customers' needs; and bulk access makes competitors
13 more efficient and cost effective.

14 19. MCIW asserts that the cost of obtaining the full contents of the databases as a UNE at
15 TELRIC prices and maintaining that databases is more economical than paying Qwest "per dip." The
16 CLECs would save money because they will not have to pay for links to the Qwest signaling transfer
17 point ("STP"). The CLECs would also save time from not having to route through a Qwest query
18 system to receive information. MCIW states that requiring MCIW to dip Qwest's database rather
19 than access its own CNAM database also forces MCIW to incur development costs associated with
20 creating a complex routing scheme within its network. Since Qwest already has its own database, it
21 does not incur the same cost associated with implementing and maintaining a routing scheme.

22 20. MCIW asserts the cost savings realized from bulk access far outweigh the costs of
23 developing an internal database.

24 21. Qwest asserts that MCIW presented no evidence that either it or Arizona consumers
25 will reap any cost savings from bulk access to the CNAM database.

26 22. Qwest argues that MCIW's request for bulk transfer of the CNAM database is
27 contrary to controlling FCC authority. Qwest cites FCC rulings that have consistently required
28 access to call-related databases through signaling transfer points on a "per query" basis and do not

1 require direct access to call-related databases. The *Local Competition Order* provides “[w]e require
 2 incumbent LECs to provide this access to their call-related databases by means of physical access at
 3 the STP [signaling transfer point] linked to the unbundled database.” The *UNE Remand Order*
 4 provides “[I]ncumbent LECs, upon request, [must] provide nondiscriminatory access to their call-
 5 related databases on an unbundled basis, *for the purpose of switch query and database response*
 6 *through the SS7 network.*”³ Qwest argues that the FCC has already defined the call-related database
 7 UNE in terms of “per query” access through the signaling network. Qwest states that because the
 8 FCC has already conducted the requisite “necessary” and “impair” analysis under 47 U.S.C. §
 9 251(d)(2), the Arizona Commission should not “redefine” that network element. Qwest states that
 10 under governing FCC standards, it is providing access that is consistent with its obligation under
 11 Section 251(c)(3) and 271 (c)(2)(B).

12 23. Qwest argues that allowing states to modify the national list of UNEs by redefining
 13 the FCC-defined call-related databases would disrupt certainty and predictability. Qwest states that
 14 MCIW was clear that for bulk access to the CNAM database to be useful, access would need to be
 15 provided on a national level, and that even if Arizona ordered bulk access, that access would not
 16 permit MCIW to offer the “innovative” services to which it alludes. Qwest states the FCC is
 17 currently considering the very issue of modifications to the national list of UNEs.

18 24. Qwest states the FCC has already determined that “per query” access to CMAN is not
 19 discriminatory, and furthermore, Qwest claims it does not enjoy superior access, as it too must launch
 20 queries to the CNAM database for each call that requires retrieval of calling-name information.

21 25. Qwest asserts that MCIW presented no real evidence of new products or new services
 22 “bulk” access would permit it to provide that it cannot already provide. Qwest claims the only
 23 “innovative” service that MCIW identified that it would provide if it had bulk access is “unique ring”
 24 for certain names. Qwest states that even with this product, bulk access is not the only means to

25 ² First Report and Order, Implementation of Local Competition Provisions of the Telecommunications Act of 1996, CC
 26 Docket now. 96-98, 95-185, 11 FCC Rcd 15499 ¶ 484 (1996).

27 ³ Third Report and Order and Fourth Notice of Proposed Rulemaking, Implementation of the Local competition
 28 Provisions of the Telecommunications Act of 1996, CC Docket No. 99-238. FCC 99-238, 15 FCC Rcd 3696 ¶ 402, 402
 (Nov. 5, 1999) (emphasis added).

1 provide the service and is not necessary because the service would probably be provided based upon
2 the calling party's phone number and not its name. Qwest states it also demonstrated that under its
3 existing access, MCIW is already able to combine information in the name database with other
4 elements.

5 26. Qwest argues that bulk access presents important customer and carrier confidentiality
6 issues. Qwest claims that providing a copy of the database raises potential privacy issues, as certain
7 non-published and non-listed end user information must be protected against disclosure. Qwest's
8 database also contains the customer records of CLECs and other carriers that have chosen to store
9 their records in Qwest's database.

10 27. Qwest argues the record fails to establish that bulk access meets the "necessary" and
11 "impair" test in Rule 317. The FCC Rule 317 provides that before state commissions may add to the
12 list of UNEs that ILECs must provide, they must find that competing carriers will be impaired if the
13 unbundling is not granted. Under Rule 317, a CLEC's ability to compete is impaired if "taking into
14 consideration the availability of alternative elements outside the incumbent LEC's network, including
15 self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack
16 of access to that element materially diminishes a requesting carrier's ability to provide the services it
17 seeks to offer." To determine whether practical, economical and operational alternatives to
18 unbundling exist, state commissions must consider cost, timeliness, quality, ubiquity and impact on
19 network operations.

20 28. Qwest asserts MCIW filed to establish that it cannot self-provision the CNAM from
21 directory assistance and subscriber list information, and that other providers have done so. Qwest
22 also claims MCIW failed to demonstrate the absence of other providers. Qwest claims it
23 demonstrated that the database market is competitive with several providers offering storage. Qwest
24 also asserts that MCIW did not demonstrate it would enjoy cost savings from bulk access, as MCIW
25 would need to construct its own database to hold the data and would also need to pay for continuous
26 updates to the database and there is no evidence these costs would be lower than obtaining the
27 information on a per dip bases. Furthermore, MCIW would not avoid the costs of establishing
28 signaling bridge or "B" links between its STP and its calling-name database under bulk access.

1 Qwest states MCIW admitted that it has not done a cost comparison between the TELRIC priced
2 access currently available and the requested bulk access.

3 29. MCIW argues that Qwest's arguments against providing CNAM on a batch basis are
4 without merit. MCIW states that all telecommunication providers are subject to the confidentiality
5 provisions of Section 222 of the 1996 Act, and there is nothing in the record to support a presumption
6 that MCIW would violate Section 222. Furthermore, MCIW argues, nothing in the FCC rules
7 prohibits providing bulk access, and that Qwest is confusing its obligation to provide access to the
8 UNE with the UNE itself. Under 47 CFR § 51.319(e)(2) MCIW is entitled to non-discriminatory
9 access to the information contained in the databases. MCIW asserts that because of its incumbent
10 status, Qwest is the only entity in Arizona with a comprehensive database; other providers are simply
11 intermediaries that get their information on a per query basis from the Qwest database, and they are
12 not substitutes for batch access.

13 30. Staff notes that FCC Rule 51.319(e)(2)(A) provides:

14 For purposes of switch query and database response through the signaling
15 network, an incumbent LEC shall provide access to its call-related
16 databases, including, but not limited to, the Calling Name Database . . . by
means of physical access at the signaling transfer point linked to the
unbundled databases.

17 31. Staff disagrees with Qwest that if the Commission were to require bulk access to the
18 CNAM database, it would be redefining the database. The UNE is the CNAM database, but the issue
19 here is how a carrier obtains access to that UNE. Staff believes, however, that in determining
20 whether access should be expanded to include bulk access, the Commission must make the same
21 inquiry for determining whether a new UNE should be required. Thus, Staff states that the first
22 inquiry is whether bulk access is technically feasible. If the answer is affirmative, then the
23 Commission must consider the impair standard contained in 41 CFR § 51.317.

24 32. All parties at the workshop agreed that providing access to the CNAM database on a
25 batch basis is technically feasible.

26 33. Staff believes that self-provisioning or obtaining the database from a third-party
27 provider are inferior options to bulk transfer at this time.

28 34. Staff does not believe that lack of bulk access to the CNAM database would

1 “materially” diminish MCIW’s ability to provide competitive local service. Staff believes that
2 although MCIW claims that it is more economical to obtain bulk access, there is no concrete evidence
3 in the record that supports MCIW’s claims. Staff further states the MCIW made no demonstration
4 that either quality or timeliness would be improved if it received bulk access. Furthermore, MCIW
5 raised no network operation concerns.

6 35. Staff opines that based on the record, Qwest is providing non-discriminatory access to
7 the CNAM database. The record supports that MCIW accesses the database in the same manner as
8 Qwest accesses the database. Additionally, Staff believes there is little in the record to support the
9 claim that per query access prevents MCIW from controlling the service quality, management of the
10 database or from adding new features, thereby relegating it to providing inferior service. Even under
11 bulk access, MCIW would be dependent on Qwest for hourly or daily updates.

12 36. Staff believes that the record supports, if anything, nationwide availability of bulk
13 access. The record shows that the one new service MCIW claims it cannot offer without bulk access,
14 it could not likely offer in any case without nationwide availability of the CNAM database.

15 37. Regarding Qwest’s proprietary concerns, Staff acknowledges that the CNAM contains
16 some Customer Proprietary Network Information (“CPNI”) in the form of non-listed and non-
17 published telephone numbers. Staff does not recommend that the Commission rely upon a carrier
18 statement alone that it will comply with the provisions of Section 222 of the 1996 Act. Staff notes
19 that Qwest also stores the records of other carriers with its own and that CLECs would receive that
20 information that does not contain the same privacy indicators that protect customer proprietary
21 information. Since no rules yet protect this proprietary information, Staff recommends that
22 nationwide rules be established before allowing bulk access.

23 38. Staff recommends that the Commission not require Qwest to provide the full CNAM
24 database on a “bulk” basis in Arizona at this time. Staff believes that the benefits of bulk access will
25 only be achieved if provisioned on a nationwide basis.

26 39. Staff further recommends that the Commission find that Qwest satisfies the
27 requirements of Checklist Item No. 10 with regard to the CNAM database at this time.

28 40. We accept Staff’s recommendation. It appears to us that MCIW’s per query access is

1 not discriminatory as Qwest accesses the database in the same manner as the CLECs. MCIW's
2 request is not unreasonable, but we find that concerns over proprietary information associated with
3 the databases of other carriers should be resolved prior to ordering bulk access to the CNAM
4 database. The FCC is currently considering the issue presented to us here. It appears that for bulk
5 access to be meaningful, it must be available on a nationwide basis. Consequently, we are not
6 requiring Qwest to provide access to the CNAM database at this time.

7 41. We find that with our resolution of this issue, there are no other outstanding issues in
8 dispute and that Qwest has complied with Section 271(c)(2)(B) of the 1996 Act, pending it
9 satisfactorily passing relevant performance measurements in the third party OSS Test.

10 CONCLUSIONS OF LAW

11 1. Qwest is a public service corporation within the meaning of Article XV of the Arizona
12 Constitution and A.R.S. Sections 40-281 and 40-282 and the Commission has jurisdiction over
13 Qwest.

14 2. The Commission, having reviewed the Second Supplemental Report on Qwest's
15 Compliance with Checklist Item No. 10 dated February 28, 2002, and conditioned upon Qwest
16 passing relevant performance measurements in the third-party OSS test, concludes that Qwest has
17 met the requirements of Section 271 pertaining to Checklist Item No. 10, and the Commission hereby
18 approves and adopts the Second Supplemental Report on Qwest's Compliance with Checklist Item
19 No. 10.

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ORDER

IT IS THEREFORE ORDERED that the Second Supplemental Report on Qwest's Compliance with Checklist Item No. 10 dated February 28, 2002, is hereby adopted.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 2nd day of MAY, 2002.

for Christopher C. Kempley
BRIAN C. McNEIL

EXECUTIVE SECRETARY

DISSENT
JR:dapWilliam A. Mendell

1 SERVICE LIST FOR:

U S WEST COMMUNICATIONS, INC. (SECTION
271)

3 DOCKET NO.:

T-00000A-97-0238

4 QWEST Corporation
1801 California Street, #5100
5 Denver, Colorado 80202

Michael W. Patten
ROSHKA HEYMAN & DEWULF
400 E. Van Buren, Suite 800
Phoenix, Arizona 85004

6 Maureen Arnold
U S WEST Communications, Inc.
3033 N. Third Street, Room 1010
7 Phoenix, Arizona 85012

Charles Kallenbach
AMERICAN COMMUNICATIONS SERVICES INC
131 National Business Parkway
Annapolis Junction, Maryland 20701

8 Michael M. Grant
GALLAGHER AND KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Karen L. Clauson
Thomas F. Dixon
MCI TELECOMMUNICATIONS CORP
707 17th Street, #3900
Denver, Colorado 80202

9 Timothy Berg
10 FENNEMORE CRAIG
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85016

Richard S. Wolters
AT&T & TCG
1875 Lawrence Street, Room 1575
Denver, Colorado 80202

11 Mark Dioguardi
12 TIFFANY AND BOSCO PA
500 Dial Tower
1850 N. Central Avenue
13 Phoenix, Arizona 85004

Joyce Hundley
UNITED STATES DEPARTMENT OF JUSTICE
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

14 Nigel Bates
ELECTRIC LIGHTWAVE, INC.
4400 NE 77th Avenue
15 Vancouver, Washington 98662

Joan Burke
OSBORN MALEDON
2929 N. Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, Arizona 85067-6379

16 Thomas L. Mumaw
Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
17 Phoenix, Arizona 85004-0001

Scott S. Wakefield, Chief Counsel
RUCO
2828 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004

18 Darren S. Weingard
Stephen H. Kukta
19 SPRINT COMMUNICATIONS CO L.P.
1850 Gateway Drive, 7th Floor
20 San Mateo, California 94404-2467

Lyndon J. Godfrey
Patricia L. vanMidde
AT&T
111 West Monroe, Suite 1201
Phoenix, Arizona 85003

21 Thomas H. Campbell
LEWIS & ROCA
40 N. Central Avenue
22 Phoenix, Arizona 85007

Daniel Waggoner
DAVIS WRIGHT TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

23 Andrew O. Isar
TRI
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335

24 Bradley Carroll
25 Cox Arizona Telcom, L.L.C.
1550 West Deer Valley Road
Phoenix, Arizona 85027

Douglas Hsiao
Jim Scheltema
Blumenfeld & Cohen
1625 Massachusetts Ave. N.W., Suite 300
Washington, DC 20036

26 Richard M. Rindler
Morton J. Posner
27 SWIDER & BERLIN
3000 K Street, N.W. Suite 300
28 Washington, DC 20007

Raymond S. Heyman
Randall H. Warner
ROSHKA HEYMAN & DeWULF
400 E. Van Buren, Suite 800
Phoenix, Arizona 85004

- 1 Diane Bacon, Legislative Director
COMMUNICATIONS WORKERS OF AMERICA
5818 North 7th Street, Suite 206
- 2 Phoenix, Arizona 85014-5811
- 3 Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
- 4 Tempe, Arizona 85281
- 5 Robert S. Tanner
DAVIS WRIGHT TREMAINE LLP
17203 n. 42ND Street
- 6 Phoenix, Arizona 85032
- 7 Mark P. Trinchero
DAVIS WRIGHT TREMAINE LLP
1300 S.W. Fifth Avenue, Suite 2300
- 8 Portland, Oregon 97201
- 9 Jon Loehman
Managing Director-Regulatory
SBC Telecom, Inc.
5800 Northwest Parkway
Suite 135, Room 1.S.40
San Antonio, Texas 78249
- 10
- 11 Lyndall Nipps
Director, Regulatory
Allegiance Telecom, Inc.
845 Camino Sure
Palm Springs, California 92262
- 12
- 13 M. Andrew Andrade
5261 S. Quebec Street, Suite 150
Greenwood Village, CO 80111
Attorney for TESS Communications, Inc.
- 14
- 15 Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, Arizona 85016-9225
- 16
- 17 Laura Izon
COVAD COMMUNICATIONS CO
4250 Burton Street
Santa Clara, California 95054
- 18
- 19 Al Sterman
ARIZONA CONSUMERS COUNCIL
2849 E 8th Street
Tucson Arizona 85716
- 20
- 21 Brian Thomas
TIME WARNER TELECOM, INC.
520 S.W. 6th Avenue, Suite 300
Portland, Oregon 97204
- 22
- 23 Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
- 24
- 25 Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007
- 26
- 27
- 28

IN THE MATTER OF QWEST COMMUNICATION, INC.'S
SECTION 271 APPLICATION

ACC Docket No. T-00000A-97-0238

SECOND SUPPLEMENTAL
REPORT ON QWEST'S COMPLIANCE

With

CHECKLIST ITEM: NO. 10 -

DATABASES AND
ASSOCIATED SIGNALING

INCLUDES DATA FROM THE (REOPENED) WORKSHOP
HELD ON 01/10/02, AND BRIEFS FILED ON 01/25/02

FEBRUARY 28, 2002

DECISION NO. 64837

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On April 9, 2001 AT&T and WorldCom ("WCom") filed a request to supplement the record. This request was granted; Qwest filed its supplementary response on October 12, 2001.

2. On November 19, 2001 Arizona Corporation Commission Staff filed a Supplemental Report¹ on Qwest's compliance with Checklist Item 10. This Checklist Item went before the Commission for deliberation and decision on December 20, 2001. The Commissioners concluded that the record had not been sufficiently developed for them to issue a decision on whether or not to provide CLECs with bulk access to Qwest's CNAM ("Customer Name") database.² Therefore the issue was remanded for "fuller analysis of the facts and a fuller factual record on the database transfer."³

3. On January 10, 2002, an additional workshop was held to supplement the record on whether or not CLECs should be given bulk access to Qwest's CNAM database. Both Qwest and WorldCom had witnesses present who offered additional evidence in support of their respective positions. WCom exhibits included the Michigan Order, the CNAM Download Agreement between WCom and Ameritech, and excerpts from the Ameritech PUC December 18, 2001 decision, the Georgia PUC Order of February 6, 2001 and the Georgia PUC Order of September 18, 2001. Qwest entered previously filed testimony of Margaret Bumgarner, her rebuttal and supplementary testimony, a list of states in which Qwest operates which have issued Orders concerning Checklist Item 10, and a chart describing how the CNAM database works. Following are Staff's Findings of Fact and Conclusions of Law on this issue.

B. DISCUSSION

1. POSITION OF THE CLECS (WORLDCOM)

4. WCom opened its testimony on January 10, 2002, by stating that "dip" (or "per-query") only access as compared to bulk access to the CNAM database is discriminatory. WCom stated that it needs this bulk access in order to provision caller-ID. WCom went on to state that a disadvantage of the "per-dip" access is that WCom is required to pay every time it accesses the CNAM database. It claimed that this is discrimination for WCom customers such as telemarketers participating in fund drives, who are required to pay for each dip. 1/20/01 Tr. P. 10.

¹ Staffs original report was dated January 2, 2000. The Commission's Report and Order (Order 63384) adopting Checklist Item 10 was dated February 16, 2001.

² TR pg. 32 lines 4-14.

³ TR pg. 34 lines 7-8.

DECISION NO. 64837

5. WCom went on to state that its goal is to establish a nationwide database in order to have the ability to provide different and innovative, or new, services than those provided by the ILEC. It offered as an example of a new service the "distinctive ring" service. It stated that it cannot provide this with only "per-dip" access to the CNAM database, therefore, its ability to truly compete is harmed. WCom further stated that all it wants to do is use the CNAM database as a Unbundled Network Element ("UNE") in order to provide telecom service. It took the position that the CNAM database is a UNE and therefore should be provided in its entirety to a CLEC, as compared to the CLEC being provided access only to the UNE. Id. at 15-19.

6. WCom acknowledged that the FCC requires "per-query" access only, but since it is now feasible to provide bulk access, as shown in Exhibit 7 WorldCom 3, the Michigan Public Service Commission has now ordered Ameritech to provide bulk access. Id. at 32-33.

7. WCom also stated that it would be in the public interest to provide bulk access to the CNAM database, by allowing the CLEC's to have the ability to provide the same services that the ILEC can offer without having to pay each time the CLEC "dipped" into this database. WCom also stated that it is more costly for WCom, and therefore for its retail customers, to continue on a per-dip basis, than it would be on a bulk basis. Id. at 34-36.

8. WCom supported its arguments for bulk access by alleging that the Michigan Commission has ordered bulk access, and that its (WCom's) contract with Ameritech is so worded. Under questioning WCom acknowledged that it does not yet have bulk access to the CNAM database in Michigan, even though the Commission has so ordered, because Ameritech Michigan has appealed the Order of the Commission. Id. at 39.

9. WCom's other argument for bulk access was based on its contention that the CNAM database itself is a UNE, that Qwest is required to provide access to that UNE, and WCom's interpretation of this is that it must provide the entire UNE rather than simply providing access to the information contained therein. Id. at 44.

10. In its January 25, 2002 brief on CNAM Issues, WCom stated that Qwest must provide the CNAM database on a "batch" basis in order to comply with the non-discrimination provisions of the Federal Telecommunications Act of 1996 ("The Act"). WCom stated that the CNAM database provides CLECs the listed name and information associated with the requested telephone number needed to provide caller ID services to their customers. Further, WCom stated that currently, as a call to a CLEC's customer reaches the CLEC's terminating switch, a caller ID request is routed through the network to Qwest's or the CLEC's own CNAM database containing the "name information" to be displayed on the customers terminating premises equipment. WCom asserted that the CNAM Database is identified by the FCC as a "call related database" to which ILECs must provide access to CLEC's as UNEs, pursuant to Section 251(c)(3). This Section of the Act requires ILEC's such as Qwest to provide "non-discriminatory access" to UNEs at Total Element Long-Run Incremental Cost ("TELRIC") rates. 1/25/02 WCom Br. 1-2.

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11. WCom stated that limiting it to a per-query access to the database is discriminatory for three reasons: 1) (Bulk) Download access to the CNAM Database is technically feasible; 2) Provision of CNAM on a batch basis is in the public interest because it will make competitors more efficient and encourage development of new, innovative services; 3) Qwest's arguments against providing CNAM on a batch basis are without merit, since neither the Federal Act's privacy requirements nor the FCC UNE rules prohibit a State Commission from ordering CNAM access on a batch basis. *Id.* at 2-3.

12. WCom further stated that ILEC's have a duty to provide any requesting carrier non-discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and non-discriminatory. WCom stated that Section 51.319(e)(2)(A) of the FCC's rules also require CLECs to provide non-discriminatory access to all call-related databases, such as CNAM, as UNEs. It stated that the "non-discriminatory" requirement with respect to call related databases means that Qwest has a duty to provide access to the databases in at least the same manner that Qwest provides it to itself and to other carriers. The access to the CNAM database WCom seeks, it stated, would permit it to provide caller ID services to its customers with the same level of efficiency as Qwest. WCom acknowledged that the FCC currently requires only per query access to the database, but stated that because download access is now technically feasible, and for the reasons set forth in its January 25, 2002 brief, Qwest should be required to allow CLEC's the more robust download access to the database. *Id.* at 4.

13. WCom compared access to the CNAM database to the Directory Assistance Listing ("DAL") database which is used to provision directory assistance services. Although CLEC's were originally restricted to per-query access to the ILEC's DAL databases, WCom stated that the FCC specifically found and concluded that LEC's may not restrict competitive access to the DAL database by restricting access to per-query access only, as stated in the 1999 Directory Listing Order, paragraph 152, as follows:

"Although some competing providers may only want per-query access to the providing LEC's directory assistance database, per-query access does not constitute equal access for a competing provider that wants to provide directory assistance from its own platform. With only per-query access to the providing LEC's database, new entrants would incur the additional time and expense that would arise from having to take the data from the providing LEC's database on a query-by-query basis then entering it into its own database in a single transaction. . . Such extra costs and the inability to offer comparable services would render the access discriminatory." *Id.* at 4-5.

14. WCom stated that limiting it to per-query or dip access prevents WCom from controlling the service quality, management of the database, or from adding new features, thereby allowing only the provision of inferior service. Thus, by enjoining superior access to its CNAM database, Qwest limits WCom to an inferior service it can provide more efficiently, quickly and cheaply. WCom stated that the Georgia Commission found that: "The evidence supports the conclusion that MCIW will be able to provide better service if BellSouth provided CNAM via electronic download. . . ." *Id.* at 6.

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15. WCom stated that at the conclusion of the January 10, 2002 Workshop on CNAM information, all parties concluded that provision of the CNAM database in its entirety is technically feasible. It further stated that technical feasibility is also demonstrated by the approval of download access to CNAM in Michigan, Georgia and Tennessee. WCom also stated that although the FCC's rule 51.319 does not require more than per-query access to call related databases, this requirement is merely a baseline where direct access to the database is not possible. Id. at 7.

16. WCom also stated that if one looks at the FCC's conclusions in the *Local Competition First Report and Order* upon which the rule is based, it becomes obvious that while the FCC considered allowing direct access to call related databases, it found that such access was not technically feasible at that time. Thus, WCom observed that the FCC's conclusions on direct access were clearly subject to reconsideration if direct access to certain databases became technically feasible. Finally, with respect to technical feasibility, WCom stated that the database can be made available by download of the information with updates to the database on a daily or even an hourly basis in the same manner that WCom uses to populate and update its DAL database. Id.

17. WCom stated that provision of CNAM access on a batch basis is in the public interest, for several reasons. First, CLEC's who operate their own CNAM database are not restricted to the exact same service and process offered and used by Qwest, thus allowing the potential for development for innovative services. Bulk access to the CNAM database allows CLEC's to structure their databases to suit their customers needs as contemplated by the Act. Id.

18. Provision of CNAM access on a batch basis will also make competitors more efficient and cost effective, since CLECs will not have to use multiple "dips" for the same number and CLECs will save money because they will not have as much need to pay for links to the Qwest Signaling Transfer Point ("STP"). WCom stated that the cost of obtaining the full contents of the database, as a UNE at TELRIC prices, and maintaining its own database is more economical than requiring CLECs to pay Qwest on a per-dip basis. Further, WCom stated that efficiency results from the time savings of not having to route through a Qwest set query system to receive information as opposed to accessing information directly through the CLEC's own database. WCom stated that the cost savings realized by download access to the database far outweigh the costs of developing an internal database. Id. at 9.

19. Finally, in this regard, WCom stated that the Tennessee Regulatory Authority recognized the public interest aspect of allowing CNAM on a batch basis when its director said "we should require BellSouth to provide the electronic download requested, that being "calling name database", to WCom, . . . requiring BellSouth to act in this fashion is consistent with the Act and it also serves to provide the competitors the same access to information as BellSouth and puts them on the same parity position".⁴ Id.

⁴ WCom Hearing Exhibit W-7.4; December 18, 2001 excerpt of directors conference, pages 8-9.

20. WCom contended that Qwest's arguments against providing CNAM on a batch basis are without merit. WCom argued that Qwest's privacy concerns presume that WCom would violate Section 222 of the Act, and that such a presumption is not supported by any evidence nor is there any basis for such a presumption or assumption. It further stated that the only data that are sensitive for a service like caller ID are the non-published numbers of those customers that are unlisted. Qwest blocks this information at the switch regardless of whether WCom or Qwest processes the call. Moreover, Qwest customers have the option to institute name blocking. Id. at 10.

21. WCom discounts Qwest's argument that the FCC does not require ILEC's to provide CNAM access on a batch basis. WCom stated that for purposes of this proceeding, the key point is that the FCC rules do not prohibit states from ordering CNAM on a batch basis. WCom stated that Michigan, Tennessee and Georgia have done so. WCom contends that Qwest's position in this regard appears to be based on an assumption that the UNE is merely the access to the database, rather than the database itself. Notwithstanding the fact that download access to the CNAM database is technically feasible, the FCC quite clearly and repeatedly identifies call-related databases as UNEs. WCom referred to the FCC's rules for the definition of the "Network Element" which specifically includes databases:

"NETWORK ELEMENT - The term "Network Element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, **databases**, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunication service. 47 USC section 153(29)(*emphasis added*)" Id. at 11.

22. WCom stated that Qwest is confusing its obligation to provide access to the UNE with the UNE itself. Under 47 C.F.R. Section 51.319(e)(2): "WCom is entitled to non-discriminatory unbundled access to the **information** contained in SWBT's databases that is used in the billing and collection or the transmission, routing or other provisions of a telecommunications service. The database is the information." Moreover, as stated earlier in this brief, the Michigan PSC recently ruled on this very issue when they ordered Ameritech to provision CNAM on a download basis as a UNE. Id. at 11-12.

23. Finally, WCom stated that although other companies such as Illuminet offer CNAM services, these services get their information from other sources, such as Qwest. These other companies are not bound by the same UNE obligations as Qwest and other ILEC's; rather they are simply an intermediary service that gets its information on a per-query basis from the Qwest database. They are not a substitute for batch access to Qwest's CNAM database. Id. at 12.

2. POSITION OF QWEST

24. Qwest's witness stated at the January 10, 2002 Workshop that Qwest's access to the CNAM database is the same as the CLEC's, on a per-query basis, i.e., Qwest provides access to the CLEC's on the same basis as it provides itself. Id. at 46.

25. Qwest further stated that there is a new FCC proceeding which is the appropriate forum for WCom to raise issues concerning additional UNE's under Section 271. She further stated that Qwest has contracts with twelve calling-name providers in order to have access to other databases around the country. Of these twelve database providers, 5 are "HUB" providers. Qwest stated it is currently negotiating with a thirteenth provider which would allow it entry to a sixth HUB. These alternative providers are all interconnected through SS7, and all customers access their databases on a per-query basis, including Qwest. All of these databases are published by Telcordia. Id. at 50, 52, 58-62.

26. Qwest also voiced a concern for privacy issues related to providing a copy of the full CNAM database, since it contains non-published and non-listed customer information. Id. at 64-65.

27. Qwest stated that a fundamental issue is whether or not it is required to provide the UNE or provide access to the UNE like access to loops. Qwest further stated that the *UNE Remand Order* obligates Qwest to provide access through the signaling network. Qwest also stated that access through the signaling network is the means of entry for other third party providers as well as other CLEC's and IXC's. Id. at 79-80.

28. In response to a question from Qwest, WCom acknowledged that it has made no cost comparisons between access on a "per-dip" or "bulk" basis.

29. WCom queried Qwest as to whether or not Qwest has the ability to manipulate data in the CNAM database. Qwest responded that it populates the database, and adds and deletes data to it on a regular basis. It also stated that anyone can add data or delete data at any time. Qwest also stated, in response to a question from WCom, that it does not provide the full CNAM database to other database providers such as Illumit or Targis. Qwest further stated that all access among the various providers is on a per-query basis. Id. at 95-96, 98-100.

30. Qwest's January 25, 2002 brief stated that the record does not support imposing a requirement to provide "bulk access" to its CNAM database to CLECs. Qwest stated that as the record demonstrates, there are no new products, no new services, and no tangible benefit that Arizona consumers will reap if WCom is granted the bulk access it demands. Qwest further stated that there is no evidence that Arizona consumers would reap any cost savings, and that WCom failed to establish that even it would realize any cost savings. Furthermore Qwest stated that providing a copy of its CNAM database would present possible confidentiality issues for both end-user customers and CLEC's that store their data in the Qwest CNAM database. Qwest also stated that the FCC has determined that CLEC's can self provision calling-name databases or use alternative providers' calling-name databases without diminishing their ability to offer service. 1/25/02 Qwest Br. 2.

31. Qwest stated that eleven State Commissions⁵ in its region have reached the conclusion that "bulk access" to the CNAM database is unnecessary, not a condition of Qwest's compliance with Checklist Item 10, and therefore, not a public interest concern. Qwest stated the FCC reached a similar conclusion in the *UNE Remand Order* by ordering access to the calling-name database on a query-response basis through the signaling network, as opposed to ordering BOCs to provide CLECs a copy of that database. *Id.*

32. Qwest stated that the FCC has defined signaling and call-related databases and defined the call-related database in terms of "per query" access through the signaling network. Under governing FCC standards, Qwest provides access that is wholly consistent with its obligations under Section 251(c)(3) and 271(c)(2)(B). Because the FCC has already conducted the requisite "necessary" and "impair" analysis under 47 USC Section 251(d)(2), Qwest believes that the Arizona Commission should not "redefine" that network element. *Id.* at 3.

33. In ordering unbundling of signaling databases and call-related databases under Section 251(c)(3), Qwest states that the FCC unambiguously held that access must be provided on a "per-query" basis only and defined the signaling and call-related database UNE in terms of this access as follows:

"We conclude that Incumbent LEC's, upon request, must provide non-discriminatory access on an unbundled basis to their call-related databases for the purposes of switch query and database response through the SS7 network. . . we require Incumbent LEC's to provide this access to their call related databases by means of physical access at the STP linked to the unbundled database. (emphasis added) Id.

34. Qwest also stated that the FCC determined that because the STP performs mediation and screening functions, "access to call-related databases must be provided through interconnection at the STP and that (the FCC) do(es) not require direct access to call-related databases". *Id.* at 3-4.

35. Qwest commented that in the *UNE Remand Order*, the FCC conducted its analysis and determined once again that "per-query" access to call related databases such as CNAM is all the Act requires, "to provide CLECs with non-discriminatory access to Incumbent LEC's Signaling Systems and call-related databases." Qwest submitted that the Arizona Commission can, in an appropriate docket, identify additional Network Elements that Incumbent LEC's must unbundle, provided the Network Element meets the requisite "necessary" and "impair" standards. *Id.* at 5.

⁵ The two remaining Commissions have not issued statements in either direction.

36. The FCC determined, however that State Commissions cannot "redefine" the UNE's the FCC has established. In the *UNE Remand Order*, the FCC stated its intent to create a national list of UNE's that Incumbent LEC's must unbundle to provide a certain and uniform obligation. To ensure that these UNE's continue to satisfy the "necessary" and "impair" requirements, the FCC determined that it, not the State Commissions, would conduct a periodic review of this national list of UNE's. The FCC further determined that permitting individual States to modify the national list of UNE's by removing elements would disrupt certainty and predictability in the telecommunications market. The FCC has conducted the requisite unbundling analysis and determined that access to call-related databases on a "per-query" basis through the STP is necessary for competition. *Id.* at 6.

37. Qwest argued in the January 10, 2002 Workshop that WCom was clear that to be of any use to it, bulk access to calling-name databases would need to be provided on a *national* level. WCom stated that to be useful for competitive purposes, it must "have access to the underlying data in all parts of the country". Even if the Arizona Commission ordered "bulk" access in Arizona, that access would not permit WCom to offer the "innovative" services to which it alluded. Qwest stated further that this Commission cannot grant the nationwide access WCom seeks. According to Qwest, to the extent WCom or any other carrier believes the FCC should modify access to call related databases, the FCC has recently commenced a proceeding to entertain precisely that type of question. Qwest believes that the Arizona Commission should not grant WCom's request when what WCom seeks is what only the FCC can grant, and the FCC is in the process of reviewing its list of UNE's itself. *Id.* at 7, 17.

38. Qwest further stated that the FCC has already determined that "per-query" access to CNAM is not discriminatory. In the *UNE Remand Order*, paragraph 402, the FCC conclusively determined that access to calling name databases through the signaling network on a query-response basis is non-discriminatory:

"We require Incumbent LEC's, upon request to provide non-discriminatory access to their call-related databases on an unbundled basis, *for the purpose of switch query and database response through the SS7 network.* (emphasis added) *Id.* at 8.

39. Qwest also contended that the FCC has indicated CLEC's can self provision calling-name databases or use alternative providers calling-name databases without diminishing their ability to offer service. As Qwest explained at the January 10, 2002 Open Meeting, Qwest itself launches queries to the CNAM database for each call that requires retrieval of calling name information. As Qwest's witness testified:

"... (as to) non-discriminatory access, we provide access to the database in exactly the same manner that we access that database, and that's through the STP on a query-response basis. When we provide a service to our end-user customers and calling name is a terminating service, we provide that on a query-response basis. That if the end-user is paying for caller-ID and calling-name service, we launch a call to (the) calling-name database." *Id.*

40. According to Qwest, it does not enjoy superior access. Furthermore, industry standard groups have defined access to calling-name databases through the signaling network on a query-response basis. Thus, Qwest stated that WCom's claim is not only inconsistent with the law, it is inconsistent with the facts and industry standards. Id. at 9.

41. Qwest contended in its January 25, 2002 brief that WCom presented no real evidence of new products or new services that "bulk" access would permit it to provide that it cannot already provide. The only so-called "innovative" service that WCom identified that it might provide, if the Commission granted its request, was a "unique ring" for certain names. WCom stated that it did not know the specifics of any other service it might offer if the Commission were to grant its request. With respect to the specific example WCom provided, Qwest stated that the CNAM is not the only means to provide this service, since it could be provided based upon the calling parties telephone number. Thus, if this is the service WCom seeks to provide, it can do that today through messages sent across the SS7 signaling network without even launching a query to the CNAM database. Id. at 9-10.

42. In response to WCom's statement that if it were given a copy of the database it could combine information in the database with "other elements" to offer some unspecified new services, Qwest demonstrated that it can do that today by dipping into other Qwest databases currently accessible to CLECs, obtaining information and combining it with other information the CLEC has, or has created, in its own databases. Finally, in this regard, Qwest stated that its Directory Assistance List ("DAL") and subscriber list information already give CLEC's the customer name and telephone information WCom seeks through CNAM database. Under SGAT Section 10.6, CLEC's can download Qwest's DAL database and use it for any lawful purpose. With DAL, which CLEC's get already, non-listed and non-published number indicators are in place and provide CLEC's the information WCom seeks. Id. at 10-11.

43. Qwest stated that there are customer and CLEC privacy issues associated with WCom's request to download Qwest's CNAM database. Under Rule 51.319(e)(2)(E), Incumbent LEC's are required to provide CLEC's access to call-related databases in a manner that complies with 47 USC Section 222, the statutory provisions regarding customer proprietary network information. Access on a query-response basis provides protection of end-user customer and carrier information that is in Qwest's database. Providing a copy of the database, however raises potential privacy issues. Id. at 11.

44. In addition to privacy issues concerning Qwest retail customers, Qwest's CNAM database includes the customer records of CLEC's and other carriers that have chosen to store their records on Qwest's database, with the understanding that such information would be protected from unauthorized disclosure or use. Requiring Qwest to turn over a copy of its database, WCom would have total access to all records of these other carriers. By turning over a copy of the database, WCom and other CLEC's would be acquiring that information without the privacy indicators that protect customer proprietary information. Because the FCC has never required Incumbents to provide downloads of their calling name databases, the rules for protection of this proprietary information have not been established. By providing "per-query" access, however, these proprietary issues are eliminated. Id. at 12.

45. Qwest stated that while the FCC does permit State Commissions to add to the list of UNE's that Incumbent LEC's must provide, the FCC requires that before ordering additional unbundling, State Commissions must conduct a rigorous analysis under 47 C.F.R. Section 51.317. Rule 317 provides a detailed test for both "proprietary" and non-"proprietary" network elements. The FCC requires State Commissions to conduct a detailed examination of whether competing carriers will be "impaired" if the unbundling is not granted. In making the analysis of whether practical, economical, and operational alternatives to unbundling exist, the State Commission is required to consider five factors: (a) cost; (b) timeliness; (c) quality (d) ubiquity; and (e) impact on network operations. *Id.* at 12-13.

46. Qwest stated that WCom has failed to provide sufficient evidence to support a showing that its ability to provide service would be "impaired" if it were denied the "bulk" download of CNAM it seeks. According to Qwest, WCom failed to prove that it cannot self-provision the calling-name database it seeks. Qwest stated that it demonstrated that WCom can construct a calling-name database from directory assistance and subscriber list information currently available and that other providers have done so. Qwest also stated that WCom failed to demonstrate the absence of alternative providers. Qwest, on the other hand, states that it affirmatively established that the calling-name database market is competitive, with several providers offering such storage service. *Id.* at 14.

47. Qwest stated that the FCC previously determined there are no cost impediments to CLEC self-provisioning access to calling-name databases. In the *UNE Remand Order*, CLEC's claimed it would be costly for them to replicate the Incumbent LEC's calling related databases or obtain access to call-related databases from third parties. The FCC rejected those arguments out of hand. It is Qwest's opinion that WCom's evidence was also insufficient to demonstrate that there is a cost impediment. At the Workshop WCom could not establish that there would be any cost difference if Qwest were required to provide a copy of its CNAM database. As Qwest demonstrated, WCom can receive access on a "per-dip" basis at TELRIC rates. If it were to obtain the bulk access it seeks, WCom would need, at a minimum, to construct its own database to hold that data, a cost that it acknowledged was "not insignificant". That construction would also not reflect TELRIC rates. In addition to constructing its own database, WCom would also need to pay for the copy of the database information as well as for all continuing updates to that database. It did not present any evidence that these costs would be lower than dipping into Qwest's database. WCom would also still need to dip its own database, and it did not present facts that this cost would be lower than dipping Qwest's database. *Id.* at 15.

48. Qwest stated that WCom must still have B-Cap links between its STP and its calling-name database. WCom failed to establish that it would avoid the costs of establishing these links if were it given a bulk download of Qwest's CNAM database. Finally, with regard to this subject, WCom admitted in the Workshop it had done no cost comparison between the TELRIC priced access it now has available and the anticipated costs of the bulk download it requests. WCom stated that it need not provide this Commission with that information because the cost savings were "self-evident". Also, whether WCom dips into its own database or dips into Qwest's at TELRIC, Qwest contended that WCom must still perform database dips, which carry with them a cost. *Id.* at 15-16.

49. Qwest stated that WCom relies heavily on a Michigan Commission decision that granted its request for bulk access to Ameritech's calling-name database. Qwest further stated that the discussion of this issue in the March 2001 Michigan Commission's decision is cursory at best, since it devotes four sentences to the issue and grants WCom's request with virtually no analysis. The Michigan Commission did not discuss the cost issues, alternative sources for this information, and the possible proprietary information issues that Qwest has raised. Further, Qwest expressed concern for WCom's excerpt of deliberations from the Tennessee Regulatory Authority, as the discussion is extremely abbreviated and does not discuss the evidence and arguments presented by the parties. *Id.* at 17.

50. Regarding the Georgia Commission decisions, Qwest stated that they do not support WCom's position. The Georgia Commission's original decision rested heavily on its view that it is "technically feasible" to provide the database download. Nevertheless in its subsequent September 2001 decision, the Georgia Commission held that BellSouth must only provide access to its CNAM database on a "per-query" basis. BellSouth, like Qwest, stated that its CNAM database currently holds the records of other carriers. BellSouth also stated that its agreements with these carriers had confidentiality provisions. Based on these facts, the Commission concluded BellSouth need only provide access on a "per-query" basis at this time. In addition, the Georgia Commission imposed other restrictions on WCom's use of the CNAM database such as, for example, requiring WCom to assume the costs BellSouth incurred to remove data relating to other states and requiring WCom to use the information solely to provide the caller identification name to the WCom end-user. *Id.* at 18-19.

51. In contrast to the decisions WCom has cited in this proceeding, eleven State Commissions in Qwest's region have addressed the identical request WCom makes here, and have recommended rejection of WCom's position.⁶ Beyond these eleven decisions⁶, other State Commissions outside of Qwest's region have rejected WCom's arguments. For example, WCom recently lost this identical issue in California. The Florida Commission also rejected WCom's claims. The Florida Commission held that WCom's demands for a copy of the CNAM database failed to distinguish between "access to the CNAM database" which BellSouth (and Qwest) provide and the FCC rules require, and "actual and physical possession of the database". Finally, Qwest stated that to determine whether it provides access to CNAM consistent with Checklist Item 10, the FCC has been clear that the Commission should examine Qwest's compliance with existing rules.⁷ *Id.* at 19-20.

"Section 271 conditions authorization to enter the long distance market on a BOC's compliance with the terms of the competitive checklist, and those terms generally incorporate by reference the core local competition obligations that Sections 251 and 252 impose on all Incumbent LEC's. . . . In determining whether a BOC applicant has met the local competition prerequisites for pre-entry into the long distance market, therefore, we evaluate its compliance with our rules and orders in effect at the time the application is filed." *Id.* at 21.

⁶ Two Commissions have not yet stated positions on this issue.

⁷ See Memorandum Opinion and Order, application of SBC Communications, Inc., . . . CC Docket No. 00-64, FCC 00-238 at paragraphs 22-26 (June 30, 2000) ("SBC Texas Order").

52. As set forth above, Qwest stated that the FCC has not required Incumbent LEC's to provide a download of the calling-name database as a UNE. Instead, unambiguous FCC rules require Incumbents to provide access to their calling-name databases through signaling transfer points. If WCom wishes to change the rules, the form available to it is the FCC triennial review of its unbundling rules; WCom should bring its claims there. *Id.* at 23.

53. Qwest believes it has established as fact that it provides access to its calling-name database in accordance with FCC rules. Qwest believes that it has further established as fact that customer name and telephone number information is available from Qwest through other means already. It has also established as fact that bulk download of CNAM is not required to provide any "innovative" service, and would raise serious customer and carrier privacy issues. Qwest also believes that it has established as fact that WCom will not be impaired in its ability to provide service without this new network element. *Id.*

4. STAFF DISCUSSION AND RECOMMENDATION

54. With respect to the provision of "bulk versus "per-query" access to the CNAM database, Staff notes that FCC Rule 51.319 only requires per-query access to call-related databases at this time.

55. The FCC has defined call-related databases and held that this element is accessed through the Signaling Transfer Point (STP), not via a bulk download. Rule 51.319(e)(2)(A) provides that access is on a "per-query" basis through STPs:

"For purposes of switch query and database response through the signaling network, an incumbent LEC shall provide access to its call-related databases, including, but not limited to, the Calling Name Database. . . by means of physical access at the signaling transfer point linked to the unbundled databases."⁸

56. While Qwest is correct that a State Commission cannot redefine UNEs required under Federal law, a State Commission can order that an ILEC make additional UNEs available as long as the requirements of Federal law in this regard are met. Qwest argued that by allowing bulk access to the CNAM as requested by WorldCom, the Commission would be "redefining" a UNE established by the FCC, something it is precluded from doing under Federal law. Staff disagrees. The UNE is the CNAM database, what is at issue here, is how a carrier obtains access to it. Nonetheless, because the type of access is fundamentally different, Staff believes that it is appropriate to conduct its inquiry under the standards applicable for determining whether a new UNE should be required.

57. In examining whether to make bulk access to the CNAM available as a new UNE, it is necessary to first determine whether bulk access is technically feasible. In its *Local Competition First Report & Order*, the FCC found that such access was not technically feasible.

⁸ 47 C.F.R. § 51.319(e)(2)(A).

We conclude that it is not technically feasible to unbundle the SCP from its associated STP. We note that the overwhelming majority of commenters contend that it is not technically feasible to access call-related databases in a manner other than by connection at the STP directly linked to the call-related database. Parties argue that the STP is designed to provide mediation and screening functions for the SS7 network that are not performed at the switch or database. We, therefore, emphasize that access to call-related databases must be provided through interconnection at the STP and that we do not require direct access to call-related databases.

Id. at para. 485.

58. At the conclusion of the Workshop, all parties concluded that the type of access requested by WorldCom, i.e., a download or copy of the Qwest CNAM database is technically feasible. See Tr. P. 71-72, 76-77 and 79. Access to the database via connection at the STP is not necessary because the information service can be delivered to WorldCom's Arizona subscribers over WorldCom's own SS7 network without having to access Qwest's network. WorldCom Br. P. 7. However, since this is an active database, updates to the database would have to be made on a daily or hourly basis by Qwest. This is the same manner that WorldCom uses to populate and update its DAL database. Id.

59. If the Commission is going to require Qwest to provide a new UNE, it must consider the standards contained in 47 C.F.R. Section 51.317. Following is the standard for non-proprietary network elements:

(1) Determine whether lack of access to a non-proprietary network element "impairs" a carrier's ability to provide the service it seeks to offer. A requesting carrier's ability to provide service is "impaired" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer. The Commission will consider the totality of the circumstances to determine whether an alternative to the incumbent LEC's network is available in such a manner that a requesting carrier can provide service using the alternative. If the Commission determines that lack of access to an element 'impairs' a requesting carrier's ability to provide service, it may require the unbundling of that element, subject to any consideration of the factors set forth under subsection (c).

(2) In considering whether lack of access to a network element materially diminishes a requesting carrier's ability to provide service, the Commission shall consider the extent to which alternatives in the market are available as a practical, economic, and operational matter. The Commission will rely upon the following factors to determine whether alternative network elements are available as a practical, economic, and operational matter;

(A) Cost, including all costs that requesting carriers may incur when using the alternative element to provide the services it seeks to offer;

- (B) Timeliness, including the time associated with entering a market as well as the time to expand service to more customers;
- (C) Quality;
- (D) Ubiquity, including whether the alternatives are available ubiquitously;
- (E) Impact on Network Operations.

60. In examining the "impair" standard, Staff believes, that while difficult, WorldCom can self-provision the database itself. However, it would be nearly impossible to simply store the information it received on a per query basis, since it is currently precluded from doing so under its contracts with Qwest, and it was established at the workshop that it could encounter problems with the transmission of privacy indicators. WorldCom could also obtain a database from a third party. Nonetheless, the information contained in a third party's database would probably not be as complete or up-to-date as Qwest's CNAM database. Thus, while self-provisioning and third party providers are alternatives, they are at best inferior options at this point in time.

61. Despite this, Staff does not believe that lack of access to the CNAM database on a bulk basis would "materially" diminish WorldCom's ability to provide competitive local service. From a cost perspective, WorldCom claims that it would not have to use multiple dips for the same number. Tr. P. 109-110, 112. WorldCom further claims that the cost of obtaining the full contents of the database, as a UNE at TELRIC prices and maintaining their own database, is more economical than requiring CLECs to pay Qwest on a per dip basis. WorldCom Br. at p. 8. WorldCom further claims that CLECs will save money because they will not have as much need to pay for links to the Qwest STP. Id. WorldCom further claims that requiring it to dip Qwest's database rather than access its own CNAM database also forces WorldCom to incur development costs associated with creating a complex routing scheme within its network, which Qwest would not have to incur. WorldCom Br. P. 9. WorldCom finally claims that the cost savings realized by download access to the database far outweigh the costs in developing an internal database. Id. While WorldCom's cost claims may be correct, the record is devoid of any concrete evidence, or cost support/studies that would actually bear out these anecdotal statements. In addition, it is known that WorldCom would incur substantial costs in developing and maintaining its own platform CNAM database. WCom now receives access on a "per-dip" basis at TELRIC rates. If it were to obtain bulk access, it would need to construct its own database. It would also need to pay for a copy of the database information as well as continuing updates to the database. WCom would also still have B-Cap links between its STP and its calling name database. As far as the other criteria set forth in Rule 319, no demonstration was made that either quality or timeliness would be improved if WorldCom received this database on a bulk basis rather than on a per query basis. Finally, no network operations concerns were raised.

62. WorldCom also argued that the failure by Qwest to provide CNAM on a batch basis violates the anti-discrimination provisions of the Act. WorldCom Br. at p. 3. WorldCom states that Qwest has a duty to provide access to the databases in at least the same manner that Qwest provides it to itself and to other carriers. It is Staff's opinion, based upon the record evidence, that Qwest does provide access to the CNAM database to CLECs in a nondiscriminatory manner. WorldCom's statement that limiting access to a per query basis discriminates against WorldCom and other CLECs by giving Qwest an unfair advantage is not borne out by the record. The evidence shows that the WorldCom network accesses the database in the same manner as the Qwest network. Similarly, there is little in the record to support WorldCom's statement that limiting WorldCom to per-query or dip access prevents WorldCom from controlling the service quality, management of the database, or from adding new features, thereby allowing only the provision of inferior service. See WorldCom Br. P. 5. There was not evidence in the record that the service quality or management of the database offered WCom by Qwest was at all deficient. In fact, even if bulk access to the database was made available to WCom, WCom would still be dependent upon Qwest for hourly or daily updates to those records. In addition, WCom opined on only one new service that it would offer (distinctive ring) and Staff believes that it should be able to offer that service now.

63. Even when considered from a public interest perspective, Staff believes that the record evidence only supports, if anything, nationwide availability of bulk-provisioned ILEC CNAM databases, something this Commission cannot order. And, if looked at through a new service perspective, the one new service (distinctive ring) WCom claims it cannot offer without bulk access, it could not likely offer in any event without nationwide availability of the CNAM database. WCom claimed that the ability to provide innovative services would be in the public interest because of WCom's ability to provide innovative services, although it acknowledged that bulk access to Qwest's CNAM database might also not be sufficient. WCom provided only one illustration of a service which it might provide to its retail customers where it provided "bulk" access to Qwest's CNAM database. Also, as Qwest noted, WCom can today dip into other Qwest databases currently accessible to CLECs, obtain information and combine it with other information the CLEC has or has created to offer new services. Further, WCom also claimed that the "bulk" access would be by a definition lower cost than "per-query" access, and thus also be in the public interest. However, WCom acknowledged that it has done no comparative cost analysis; it simply assumes that it is "self-evident" that "bulk" costs would be less than "per-query" costs.

64. Another concern has to do with the fact that the CNAM contains some Customer Proprietary Network Information ("CPNI"), i.e., non-listed and non-published telephone numbers. While it is correct as WorldCom states that it and all other telecommunications providers are required to comply with the provisions of Section 222 of the Federal Act, Staff does not recommend reliance upon a carrier's statement alone that it will comply with the provisions of the Act. Qwest stores not only its own records, but the records of other carriers as well. WCom and other CLECs would be acquiring that information potentially without the privacy indicators that protect customer proprietary information. No rules for protection of this proprietary information have been established, and Staff believes that such rules should exist on a nationwide basis before allowing bulk access.

65. In Staff's opinion, Qwest should not be required to provide the full CNAM database on a "bulk" basis as compared to the provision of the CNAM database information on a "per-query" basis in Arizona. Staff believes that the record demonstrates that if there are benefits to be achieved from a bulk-provisioned CNAM database, they are only achieved on a nationwide basis. WCom in fact stated at the workshop, that nationwide bulk access is what it really seeks and is what would be most useful to it. The FCC has recently commenced a proceeding to examine whether additional UNEs should be made available to CLECs. Since the FCC can order nationwide implementation of bulk-provisioned ILEC CNAM databases, Staff recommends that WCom make its request the Commission await the outcome of the FCC proceeding. Staff further recommends that the Commission should find that Qwest satisfies the requirements of Checklist Item No. 10 with regard to the CNAM database at this time.

5. VERIFICATION OF COMPLIANCE

66. Paragraph 16 of Decision No. 63384 dated February 16, 2001 stated: "Based upon the comments, testimony and exhibits submitted, no party, with the exception of WCom objects to a finding that Qwest meets the requirements of Checklist Item No. 10 subject to Qwest's passing of any relevant performance measurements in the Third Party OSS Test now underway in Arizona, and its incorporating of agreed upon language from other region workshops on Checklist Item 10 into its SGAT.

67. Paragraphs 15 and 16 of Section 2 - Conclusions of Law - of Decision 63384 dated February 16, 2001 continue to be valid. Since the issuance of that decision, no party has objected to a finding or conclusion that Qwest complies with Checklist Item 10.

68. Based on the evidence provided in the January 10, 2002 workshop and in the briefs filed on January 25, 2002 there is no reason to change the findings of paragraphs 62, 63 and 64 above.

69. WCom was invited, at the December 20, 2001 Open Meeting to supplement the record in order to provide the Arizona Corporation Commission with sufficient information to make a knowledgeable decision concerning whether Qwest should offer CLECs "bulk" access to its CNAM database, as compared to "per-query" access. Qwest was also invited, at the December 20, 2001 Open Meeting to supplement the record. Information provided in the Workshop and Briefs support continued provisioning of Qwest's CNAM database on a per query basis.

70. No outstanding issues remain on Checklist Item 10. Thus, subject to verification that Qwest has updated its SGAT as agreed, and Qwest's compliance with all relevant § 271 performance measurements as determined by the OSS Tests, Staff recommends that Qwest be found in compliance with FCC Checklist Item 10 requirements.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.

7. Checklist Item No. 10 requires Qwest to provide access or offer to provide "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion."

8. Section 271(c)(2)(B)(ii) of the Act requires a section 271 applicant to demonstrate that it offers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(I)."

9. Section 251(c)(3) in turn establishes an incumbent LECs "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251]... and section 252."

10. In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: "1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems; and to design, create, test, and deploy Advanced Intelligent Network based services at the SMS through a Service Creation Environment.

11. As a result of the proceedings and record herein, Qwest's provision of nondiscriminatory access to signaling networks, including signaling links and signaling transfer points to requesting carriers is not disputed.

12. As a result of the proceedings and record herein, Qwest's provision of call-related databases information necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database, to requesting carriers is not in dispute.

13. As a result of the proceedings and record herein, Qwest's provision of Service Management Systems and the design, creation and deployment of AIN based services at the SMS is no longer in dispute.

14. Qwest's compliance with Checklist Item No. 10 is not disputed. Qwest provides nondiscriminatory access to its signaling network and call-related databases through the terms of its proposed SGAT as well as the terms of Commission-approved interconnection agreements. Although full access to the CNAM Database was an impasse issue in other jurisdictions, it was not initially an issue in Arizona. Had it been one, Arizona would have accepted the resolution described in paragraphs 62, 63 and 64. It was raised as an issue subsequent to completion of the workshop. Based on the supplemental record, as described herein, Arizona would have accepted the resolution described in paragraphs 62, 63 and 64.

15. Based upon the comments, testimony and exhibits submitted, no party objects to a finding that Qwest meets the requirements of Checklist Item No. 10, subject to Qwest's passing of any relevant performance measurements in the third-party OSS test now underway in Arizona.